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4. Limitation of Actions (§ 167*)—Effect of Bar—Liability of Surety.—A surety is primarily liable for the debt of his principal, save that under the direct provisions of Code 1904, §§ 2890, 2891, he may require the creditor to sue, and a failure on the part of the creditor to reduce his claim to judgment will absolve the surety, but where a judgment has been recovered against both the principal and the surety the judgment must be barred against the surety to release him; for Code 1904, § 3395, provides that in an action founded on contract, though plaintiff be barred against some of the defendants, he may have judgment against any of the others against whom he would have been entitled to recover if he had sued them only, and hence a surety is not released because a joint judgment is barred as to the principal.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 651; Dec. Dig. § 167.* 13 Va.-W. Va. Enc. Dig. 59.]

Appeal from Circuit Court, Brunswick County.

Action by R. W. Manson and J. R. Shell, copartners doing business under the name of Manson & Shell, against W. P. Rawlings' executrix and others. From a judgment for defendants, plaintiffs appeal. Reversed and remanded, with directions.

E. R. Turnbull, Jr., for appellants.

R. B. Davis and E. P. Buford, for appellees.

JESSIE *v.* COMMONWEALTH.

June 13, 1911.

[71 S. E. 612.]

1. Witnesses (§ 414*)—Corroboration.—Where, on cross-examination of a witness who had identified accused as the guilty party, the defense offered the stenographic report of his testimony given before the coroner on the day after the killing, in which he was alleged to have stated that the man who killed deceased did not show his face and that the witness could not identify him, the state was entitled to introduce in corroboration declarations of the witness to the police immediately after the murder that defendant killed deceased, which statement was corroborated by four policemen.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 1287, 1288; Dec. Dig. § 414.* 13 Va.-W. Va. Enc. Dig. 972.]

2. Criminal Law (§ 823*)—Instructions—Weight of Evidence—Prejudice.—An instruction that a statement coming from any witness that the jury believe to be true is reliable testimony was not prejudicial to accused, when read in connection with other instruc-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

tions requiring that every material fact bearing on accused's guilt must be proved beyond a reasonable doubt.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1992-1995; Dec. Dig. § 823.* 1 Va.-W. Va. Enc. Dig. 592, 600; 7 Va.-W. Va. Enc. Dig. 745.]

3. Criminal Law (§ 814*)—Trial—Instructions—Applicability to Evidence.—Where, in a prosecution for homicide, there was no evidence to implicate any other person than accused in the crime, the court properly refused an abstractly correct instruction that the failure of the evidence to disclose any other criminal agent than accused was not a circumstance to be considered in determining whether he was guilty of the crime charged, but that he was presumed to be innocent until his guilt was established, and he was not to be prejudiced by the inability of the commonwealth to point any other criminal agency, nor was he called on to vindicate his own innocence by naming the guilty party.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1979-1987; Dec. Dig. § 814.* 4 Va.-W. Va. Enc. Dig. 75.]

4. Criminal Law (§ 721½*)—Trial—Misconduct of Attorney.—In a prosecution for murder, argument of the commonwealth's attorney, from the fact that accused's housekeeper, who had testified before the coroner, was absent from the state during the trial and had been induced to leave the state by accused, and that it was a fair inference that her evidence would have been detrimental to him, in the absence of any evidence on which to base such imputation, was error.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1673; Dec. Dig. § 721½.* 1 Va.-W. Va. Enc. Dig. 715; 11 Va.-W. Va. Enc. Dig. 323.]

Error to Corporation Court of City of Roanoke.

John H. Jessie was convicted of murder, and he brings error. Reversed.

SEWARD *v.* CAMP MFG. CO.

June 8, 1911.

[71 S. E. 614.]

1. Champerty and Maintenance (§ 7*)—Champertous Contracts—Deeds.—A conveyance by devisees of undivided interests in real estate, previously conveyed without authority by the executor, is not champertous, where the devisees out of possession received a specified money consideration, without any agreement by the grantee to pay anything further in case he recovered the property.

[Ed. Note.—For other cases, see Champerty and Maintenance, Cent. Dig. §§ 54-110; Dec. Dig. § 7.* 2 Va.-W. Va. Enc. Dig. 776.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.